

APPEAL NO. 031476
FILED JULY 25, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 15, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury, including a cervical and/or lumbar spine injury, with a date of injury of _____; that she did not have disability; and that the respondent (carrier) did not waive the right to contest compensability of the claimed injury. The claimant appeals these determinations and contends that the hearing officer erred in admitting one of the carrier's exhibits. The carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

We first address the claimant's assertion that the hearing officer erred in admitting the carrier's "cert 21" dated July 11, 2003. The claimant objected to the admission of the document at the hearing, asserting that it was not exchanged within 15 days as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). The hearing officer admitted Carrier's Exhibit No. 1 on the basis that, although the document had not been exchanged in accordance with Rule 142.13(c), the carrier exchanged it "when it became available upon the exercise of due diligence by the [c]arrier and because, according to the benefit review conference report, the record was left open for a period of time for the sole purpose of obtaining the form." We do not necessarily agree that the carrier exercised due diligence in locating a document that was created by the carrier and received by the Texas Workers' Compensation Commission (Commission) approximately 8 months prior to the date it was exchanged with the claimant. However, we perceive no reversible error in the hearing officer's admission of the "cert 21" because we have, in analogous cases, required that a hearing officer take official notice of essential Commission records where compliance with the 1989 Act is at issue. See Texas Workers' Compensation Commission Appeal No. 941171, decided October 17, 1994; Texas Workers' Compensation Commission Appeal No. 002287, decided November 13, 2000; Texas Workers' Compensation Commission Appeal No. 010696, decided April 26, 2001; and Texas Workers' Compensation Commission Appeal No. 012101-s, decided October 22, 2001. With regard to the claimant's argument that the hearing officer erred in admitting the "cert 21" because it was not properly filed in accordance with Advisory 2002-15, requiring that the "cert 21" be filed with the Commission's Austin office, we note that Carrier's Exhibit No. 1 indicates that it was received by the Austin office on July 11, 2002, two days after the carrier received written notice of the injury. For the foregoing reasons, we affirm the hearing officer's waiver determination.

The remaining disputed issues in this case involved factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FIDELITY & DEPOSIT COMPANY OF MARYLAND** and the name and address of its registered agent for service of process is

**LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge